IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10655 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDRABHAI DAHYABHAI DESAI & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR DHIRENDRA MEHTA for Petitioner(s) : 1 - 2.
MR. P.D.BHATE, ASST.GOVERNMENT PLEADER for Respondent(s) : 1-2.
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
None for Respondent(s) : 3,
MRS NISHA M PARIKH for Respondent(s) : 3.2.1,3.2.2 - 4.
UNSERVED-EXPIRED (N) for Respondent(s) : 3.2.3
UNSERVED-REFUSED (N) for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/09/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioners-original landlords have challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated

30.11.2004 passed in Revision Application No. TEN.B.S. 156/91 in allowing the said Revision Application and quashing and setting aside the order passed by the Deputy Collector, Navsari dated 7.6.91 and restoring the order passed by the Mamlatdar & ALT, Gandevi dated 18.1.90 in holding that the respondent No.3 herein is entitled to get the possession of the lands in question under Section 32(1-B) of the Bombay Tenancy Act and further directing the petitioners to hand over the possession of the lands in question.

2. The dispute is with regard to the lands bearing Survey No.746 paiki admeasuring 14-Gunthas of land and Survey No.772 paiki admeasuring 14-Gunthas of land situated at village Amalsad, Taluka Gandevi, District Navsari. The father of the respondent No.3-Govindbhai Gohil was cultivating the aforesaid lands in question on 1.4.55 and he was dispossessed without following any procedure as required under Section 29 of the Act and therefore, the heirs of the tenant-Govindbhai Gohil i.e. respondent No.3 herein applied for getting the possession of the lands under Section 32(1-B) of the Bombay Tenancy Act and the Mamlatdar & ALT, Gandevi by two separate orders dated 18.6.79 and 18.8.79 directed

the petitioners to hand over the possession of the aforesaid lands in question by holding that though the tenant was in possession of the aforesaid lands in question as on 15.6.55, he was dispossessed without following any procedure and illegally. The said orders came to be passed under Section 32(1-B) of the Bombay Tenancy Act. It appears that thereafter the aforesaid two orders came to be challenged before the Deputy Collector (Appeals), Navsari by two separate Revision Applications and the proceedings were remanded to the Mamlatdar & ALT, Gandevi directing the Mamlatdar & ALT, Gandevi to hold inquiry 'whether the tenant was in fact tenant as on 15.6.55 or not' and 'when the possession was taken over.' The aforesaid two orders came to be challenged before the Gujarat Revenue Tribunal being Revision Application Nos. TEN.B.S.295/82 and TEN.B.S.296/82 and both the Revision Applications came to be dismissed and the order of remand came to be confirmed. Thereafter, on holding necessary inquiry and on appreciation of evidence, the Mamlatdar & ALT, Gandevi held that the tenant was cultivating and/or in possession of the lands in question as on 15.6.55 and that he was dispossessed illegally without following any procedure and therefore, the applicant i.e.

respondent No.3 herein is entitled to possession of the lands in question under Section 32(1-B) of the Bombay Tenancy Act and therefore, directed the petitioners to hand over the possession of the lands in question to the respondent No.3 herein. The said order came to be passed by the Mamlatdar & ALT, Gandevi on 18.1.90. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, Gandevi dated 18.1.90, the petitioners preferred appeal before the Deputy Collector, Navsari being Tenancy Appeal No.54/90 and the Deputy Collector, Navsari by its judgment and order dated 7.6.91 allowed the said appeal and quashed and set aside the order passed by the Mamlatdar & ALT, Gandevi. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Navsari dated 7.6.91 passed in Tenancy Appeal No.54/90, the respondent No.3 herein preferred Revision Application being Revision Application No. TEN.B.S.156/91 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by its judgment and order dated 30.11.2004 allowed the said Revision Application quashing and setting aside the judgment and order passed by the Deputy Collector, Navsari dated 7.6.91 passed in Tenancy Appeal No.54/90 and restoring the

order passed by the Mamlatdar & ALT, Gandevi dated 18.1.90 by which the petitioners were directed to hand over the possession of the lands in question to the respondent No.3 under Section 32(1-B) of the Bombay Tenancy Act. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 30.11.2004 passed in Revision Application No.TEN.B.S.156/91, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri Dhiren Mehta, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Gujarat Revenue Tribunal has materially erred in holding that the tenant was in possession of the lands in question as on 15.6.55 and that he was dispossessed without following any procedure. He has also further submitted that the application submitted by the respondent No.3 herein under Section 32(1-B) of the Bombay Tenancy Act was barred by limitation because as per Section 32(1-B) of the Act, he was required to submit the application within a period of one year and therefore also the application submitted by the respondent No.3 was required to be dismissed. He has

relied upon the deposition of the original landlords as well as Premabhai Gohil the son of the original tenant as well as other persons in support of his submission that the possession of the lands in question was not with the original tenant i.e. Govindbhai Gohil as on 15.6.55 but the original tenant had voluntarily surrendered the possession of the lands in question in the year 1954 i.e. prior to 1955 and therefore, the respondent No.3 is not entitled to the possession of the lands in question under Section 32(1-B) of the Bombay Tenancy Act. Shri Mehta, learned advocate appearing on behalf of the petitioners has also further submitted that the Gujarat Revenue Tribunal has not properly appreciated the finding given by the Deputy Collector, Navsari. Shri Mehta, learned advocate appearing on behalf of the petitioners has also relied upon the statement of the brother of the original tenant to the effect that he was not in possession of the land in question as on 15.6.55. He has further submitted that in fact, the Deputy Collector, Navsari has specifically held on appreciation of evidence that the tenant was not in possession of the lands in question as on 15.6.55 and/or on 1.4.57 and therefore, the Revisional

Authority is not justified in interfering with the same. Thus, the judgment and order passed by the Gujarat Revenue Tribunal is assailed mainly on two grounds that the application under Section 32(1-B) of the Act is submitted after a period of limitation and that the possession was already handed over to the original land owner prior to 15.6.55 and that as the possession of the lands in question was not with the tenant as on 15.6.55, the respondent No.3 is not entitled to the possession of the lands in question under Section 32(1-B) of the Bombay Tenancy Act.

4. So far as the contention on behalf of the petitioners to the effect that as the application under Section 32(1-B) of the Act was submitted after a period of one year of dispossession and therefore, the application was not maintainable is concerned, this Court in case of ***Rasulmiya Rehmanmiya V/s. Patel Lalbhai Shankerbhai*** reported in ***24(1) GLR Page-714*** has specifically held that even the Mamlatdar & ALT, has suo-motu powers to initiate the proceedings under Section 32(1-B) of the Act where there is no time limit fixed and therefore, it is to be treated that the Mamlatdar & ALT, has initiated the suo-motu powers and therefore, in view of

the judgment of the learned Single Judge of this Court to which this Court is informed that the said judgment was thereafter confirmed by the Hon'ble Supreme Court, and therefore, the contention of the petitioners that the respondent No.3 is not entitled to any relief as the application under Section 32(1-B) was submitted after a period of one year, cannot be accepted. So far as the finding given by the Gujarat Revenue Tribunal that the original tenant was in possession of the lands in question as on 15.6.55 is concerned, the Gujarat Revenue Tribunal as well as the Mamlatdar & ALT, Gandevi have relied upon the village Form No.7/12 in which upto 1957 the name of the original tenant was mentioned. The Gujarat Revenue Tribunal as well as the Mamlatdar & ALT, Gandevi have also considered the fact that in the year 1957 the original landlords themselves submitted an application for getting the possession back which was subsequently withdrawn, meaning thereby, even as per the landlords themselves the original tenant was in possession of the lands in question even in the year 1957. Shri Menta, learned advocate appearing on behalf of the petitioners is not in a position to explain withdrawal of the application submitted by the original landlords in the year 1957.

Shri Mehta, learned advocate appearing on behalf of the petitioners has relied upon the statement of the brother of the original tenant in support of his submission that even it is admitted by him that Govindbhai Gohil was in possession of the lands in question as on 15.6.55 and so far as the contention that the possession was already handed over much earlier is concerned, it is required to be noted that it is the statement of the brother of the tenant and not of the tenant himself and the same is not binding upon the tenant. Even otherwise, as stated above, on the basis of the evidence on record it is very much clear that the Govindbhai Gohil was in possession of the lands in question as on 15.6.55. It is required to be noted that there is nothing on record to show that the tenant was dispossessed and/or the possession was taken over from him after following due procedure as required under Section 29 read with Section 5 of the Bombay Tenancy Act. When the tenant is dispossessed without following any procedure as required under Section 29 read with Section 5 of the Bombay Tenancy Act, even if the same is volunteered, the tenant is required to hand over the possession and restore the possession as per Section 32(1-B) of the Bombay Tenancy

Act. In view of the above, it cannot be said that the Gujarat Revenue Tribunal has committed any illegality and/or the judgment and order passed by the Gujarat Revenue Tribunal in restoring the order passed by the Mamlatdar & ALT, Gandevi is so perverse which requires interference of this Court exercising powers under Article 227 of the Constitution of India. On going through the entire record and the order passed by all the three authorities below even this Court is satisfied that the Mamlatdar & ALT, Gandevi has rightly held that the respondent No.3 is entitled to the possession under Section 32(1-B) of the Bombay Tenancy Act and the Mamlatdar & ALT, Gandevi has rightly passed order directing the petitioners to hand over the possession back to the respondent No.3 and the same is rightly confirmed by the Gujarat Revenue Tribunal.

5. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed. Ad-interim relief, if any, granted earlier stands vacated.

(M.R.Shah, J.)

kdc.